Secst. II-27—45,000—9-11-34

L.S.G (1935) Department.

MS SERIES.

G.O. No. 1052 P.H

DATED 8-5-1935.

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# [Despatch Abstract.]

Building - Mangalore Municipal Council - Leaving of four feet of space from street alignment - Legal advice - refused.

C.F. 30.

DEPARTMENT.

*Received* ..... 19


*Registered* ..... 19

*Subject.* 9836 N.S. 1/35

Ref:- License -- Building -- Four Feet space from street alignment.

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ENCLOSURES.
No. 3
Spare copies

R No. 2131/34-35

*Station* Mangalore *Dated the* 1st March 1935,

From (Name) M.R.Ry.C. R. Karunakara Menon, Avl., B.A., B.L
(Designation) Commissioner, Mangalore Municipality.
Mangalore.

To The Secretary to the Government of Madras,
Local Self Government Department.
Fort St.George, MADRAS.

Through: The Chairman, Municipal Council, Mangalore.

Sir,

I am directed to address Government regarding the interpretation of sections 166 and 167 of the Madras District Municipalities Act and Rule 8 of the Building Rules framed by Government. The matter came up for discussion befo the Municipal Council who referred it to a Committee who have now directed me to make this reference. I had already made a reference to the Director of Town Planning on this subject. I enclose herewith a copy of my letter to him dated 19-2-1935 and his reply thereto and request that Government may be --

pleased

pleased to advise me further in the matter.

Your obedient servant,

Commissioner, M.C. 4.3.35

F o r w a r d e d.

The letter to the Director of Town Planning -- by the Commissioner dated 19-2-1935 (copy enclosed herein)- was not forwarded through me nor the same shown to me. Hence I with-hold my observations on this subject for the present.

Municipal Office,
Mangalore, 4-3-1935.

Chairman, M.C.

4/3

Municipal Officem,

Mangalore,

19th Feb.1935.

From:

M.R.Ry. C. R. Karunakara Menon, Avl., B.A.,B.L.,

Commissioner, Mangalore Municipality, Mangalore.

To

The Director of Town Planning,

Chepauk, M A D R A S.

Sir,

I have the honour to request you will be good enough to consider the following matter and give your advice as early as possible as the matter is very urgent.

1.In the Town Planning areas of this town, as you are aware, a building line has been prescribed in the draft scheme at 10 feet from the street alignment. But as it was found that it was difficult to enforce this rule it was thought advisable to reduce it to 5 feet and to see that people stuck to it. In non-town planning areas, for the past some years, both before and after I took charge under rule 8 of the building rules framed by Government, it has been the practice invariably to put in a clause in the license granted, that there should be left a clear 4 feet space between the building and the street alignment. In a particular case which has now arisen a man has built his building without leaving the four feet as stipulated in the license and has gone on with the building in-spite of notices from me to stop the same and in spite of even a prosecution under section 317 of the District Municipalities Act having been filed against him for breach of the condition. This case has been adjourned on two occasions. As he still persisted in proceeding with the building which is now very nearly complete, I issued a notice to him under section 216 of the Act to demolish the unauthorized construction and bring the work in conformity with the terms of the license. He has filed an appeal to the Council against this order of mine, whilst there is no appeal against the terms of the license originally granted by me.

It is now contended on his behalf that the - condition of the license about the leaving of four feet mentioned above, is invalid and that I have no power to insist upon it.

What is contended is , that before rule 8 of the building rules can be enforced, a street alignment should be - prescribed under section 166 of the Municipalities Act and that unless it is done (it has not been done in this town) there is no street alignment at all and hence rule 8 of the building -- rules is invalid and cannot be enforced, there being no such -- street alignment prescribed under section 166 of the Act.

On the other hand the view that I and some of - the Councillors who agree with me take is, that in the absence of the Council prescribing a street alignment under section 166 the street alignment will be as defined under section 3 Clause (29) of the Act which is the line dividing the private land -- from the public street, and that section 166 simply gives an -- additional power to the Council to have another street alignment in private land as further away as it deems fit and if it does not do so it does not mean that there is no street alignment at all. In fact the definition of a street alignment -- under section 3 (29) would be useless if it can come into existence only when one is prescribed under section 166. For in -- such a case there will be a clear conflict in as much as under section 166 a street alignment may be, say 10 feet within -- the private land whilst the definition under section 3 would - make it only at the edge of the private land. It cannot therefore be said that the definition under section 3 (29) comes -- into operation only when a street alignment is prescribed -- under 166. What section 166 does is only gives an additional power to the Council to have a street alignment inside the -- private aland for future widening, etc.

The position therefore is that we need not have recourse to sections 166 and 167 at all. Rule 8 of the building rules must be deemed to be as much legal and enforeeable - as any section of the Act in the absence of a clear conflict - between the two. There is no such conflict. Therefore when rule 8 of the building rules says that 4 feet should be left

left between the street alignment and the proposed building, the question is what is the street alignment? It is not ---- defined in the building rules themselves. Therefore we must look to the Act for its definition as the rules of an Act should be read with the rules. Therefore, for the purpose of construing rule 8 of the building rules the definition of street alignment is stated in section 3 (29) of the Act in which case the rule -- can be enforced. For, under Clause (c) of Section 317 of the Act the construction and reconstruction of a building becomes punishab if the person constructing, commits a breach of any provision --- contained in the Act or in any rule made thereunder.

This matter came up before the last meeting of the Council when there was a keen division of opinion amongst the Councillors. As the matter will surely affect every license granted till now and cases of prosecutions launched, it is of the utmost importance that I should know exactly where I stand. I request therefore you will be good enough to advise me as to --- whether the view I take is correct or not and whether rule 8 of the building rules is invalid, illegal and unenforceable as it is contended to be. As the matter is likely to come up at the next -- meeting of the Council I shall be very much obliged if you could favour me with your opinions as early as possible treating this as urgent.

Your obedient servant,

Sd/- C.R.Karunakara Menon.

Commissioner, M.M.

TRUE COPY

Municipal Office,
Mangalore, 1-3-'35.

C.R. Karunakara Menon 2.3.35

Commissioner, M.M.

---------- 2/13

Town Planning Department.

From:

R. Dann, Esq., F.R.I.B.A.,M.T.P.I.,

Director of Town Planning,

Chepauk, Madras.

To

The Commissioner,

Mangalore Municipality.

D.T.P.No.406/35 dated 25th February 1935.

Sir,

Ref. Your letter R.No.2131.dated 19th Feb.35 re. Building - License - four feet space from street alignment.

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In the above matter the interpretation placed on the rule by you would appear to be in accordance with the intention of the Act and Rules.

2. A minimum of 4 feet space has been specified in Rule 8 of the Building Rules in accordance with Section 191 (3) (c) - provision of sufficient open space external or internal. This space should be decided with reference to the existing street alignment or to the (new) street alignment if any, prescribed under section 166. Nothing in this rule prevents the council from fixing a building line also with a view to secure an open space in excess of that prescribed in the Building Rules under section 166 or under the Town Planning ~~Act.~~ Scheme In the case of existing public streets a street alignment is -- defined in the Act and there is no need for the council to declare a street alignment unless there is a proposal with the council either to improve the street or divert or resume any portion of the street for other than street use.

The Rule is strictly enforcible under section 338 of the D.M.Act and any decision or action of the Council or the executive authority - which is in contravention of the rule is

therefore

therefore ultra vires.

A copy of your letter with my reply is being sent to Government for further advice or instructions if any, - on the matter.

Sd/- R.D.N.Simham.
25/2
For Director of Town Planning.

TRUE COPY

Municipal Office,
Mangalore, 1-3-'35.

Commissioner. M. M. 2/3.

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W.P. 9896/35. L.S.G.(B.H.)

Subject:- Building - Mangalore Municipality - Leaving of four feet space from Street alignment

Please See the report of the Commr. Mangalore municipality in paragraphs 3-5 of and the remarks of the D.T.P. in paragraphs 6-7 of the difficulty in the present case is due to the fact that no street alignment has been prescribed with reference to section 166 of the M.D.M. Act, 1920. The party who is going on with the construction of the house contends that so long as a street alignment has not been prescribed by the commr. in the manner laid down in section 166 of the M.D.M. Act vide 8 of the building rule issued with Govt. No. 1621 B.A. dt. 30-7-1932 insisting on 4 feet space from street alignment is not strictly enforceable. The Commissioner and the D.T.P. consider that

Section 166 of the M.D. Mc. Act
applies only to new street
alignments and not where there should
be an existing street alignment
in all municipalities —
while Section 3(29) of the
M.D. M Act. it is submitted
that Section 3(29) is only a
definition of the term "street
alignment" and cannot definitely
determine a street alignment
in a municipal area
unless one is duly prescribed
under section 166 of the M.D.M
act. The Commr. may be asked
to take legal advice and
act on his own responsibility
as the Municipal Law (Draft)
may be consulted. As the
matter appears to be

S.D.
2-4-35.
P.S.
1.4.35

Govt. do not generally
undertake to give legal
advice to local bodies.
The Commr. may be informed
accordingly and he may be
asked to take such legal
advice as he considers
necessary

necessary and action this work responsibility.

7/4

J.S.G (P&A) Dept

A draft order is placed for approval.

3/5

2-5-15

5-2/35

G. S. Shivaraya

C.F. 16.

## DRAFT FOR APPROVAL.

| | Date. | Initials. |
|---|---|---|
| When received for fair copying .. | | |
| When copied .. | 6/4/35 | |
| When examined.. | | |
| When signed .. | 4/5/35 | |
| When despatched. | | |

SUBJECT :—

Building - Mangalore Mc cl
leaving of four feet of space from
street alignment - legal advice
refused.

READ AGAIN _____, dated _____ 19____.

" " _____ " _____ 19____.

READ *ALSO* :—

No. 9896 From the Comm^r Mangalore Mcp, R No. 2131/34-35 dated 1.3.1935.

" _____ " _____ " _____ " _____ 19____.

" _____ " _____ " _____ " _____ 19____.

Order ~~Resolution~~ Ms. No. 1052 Dev, dated 8/5/35 ~~19~~.

Sp 4/5

The Commissioner of Mangalore Municipality is informed that the Government ~~do not understand~~ cannot give legal advice ~~to local~~ in the matter and that he ~~is asked to take~~ should take such ~~such~~ legal advice as he considers necessary and act on his own responsibility. ~~in the matter~~

Dpd. by Van / Post / Messenger

Dpr.'s initials. SG

Date 9.5.1935

8/5

2/5

2.5.35

The Comm^r, Mangalore Mcp

(Thro the Cl. C. Mangalore)

The D.T.P. ✓